

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Wireless E911 Location Accuracy)	
Requirements)	GN Docket No. 11-117
)	
E911 Requirements for IP-Enabled Service)	
Providers)	WC Docket No. 05-196
)	
Facilitating the Deployment of Text-to-911 and)	
Other Next Generation 911 Applications)	PS Docket No. 11-153
)	
Framework for Next Generation 911)	
Deployment)	PS Docket No. 10-255
)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

I. INTRODUCTION AND SUMMARY

CTIA – The Wireless Association® (“CTIA”) hereby responds to the Public Notice seeking comment on the Petition of Telecommunication Systems, Inc. (“TCS”) for Declaratory Ruling and/or Rulemaking (the “TCS Petition”) regarding intellectual property rights and technologies used to provide 9-1-1 communications services.¹ CTIA supports TCS’s request that the Commission (1) provide guidance relevant to the applicability of 28 U.S.C. § 1498 to patents that are needed to provide E911 and NG911 services; and (2) clarify that 9-1-1 location-based

¹ *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling and/or Rulemaking Filed by Telecommunication Systems, Inc.*, Public Notice, GN Docket No. 11-117, WC Docket No. 05-196, PS Docket Nos. 11-153, 10-255, DA 13-273 (rel. Feb. 22, 2013); Petition of Telecommunication Systems, Inc. for Declaratory Ruling and/or Rulemaking, GN Docket No. 11-117, WC Docket No. 05-196, PS Docket Nos. 11-153, 10-255 (filed July. 24, 2012) (the “TCS Petition”).

services are in furtherance and fulfillment of a stated government policy and that this policy may make use of patented technologies to comply with its 9-1-1 regulations.

The innovations and advancements that are a hallmark of the wireless ecosystem have played an important role in improving emergency communications and should continue to do so as stakeholders work towards Next Generation 9-1-1 (“NG911”) solutions. However, patent assertion entities are undermining this innovation by filing predatory patent infringement lawsuits against wireless providers, device manufacturers, and 9-1-1 vendors with claims based merely on the fact that the defendant is in compliance with the Commission’s Enhanced 9-1-1 (“E911”) requirements. While patent holders should be fairly compensated, lawsuits based on compliance with E911 location accuracy mandates at a minimum threaten to increase the cost of E911 services borne by governments and consumers and chill innovation in the E911 and NG911 space. The Commission should consider the issues raised by the Petition in the narrow context of 9-1-1 and clarify that 9-1-1 location-based services are in furtherance and fulfillment of a stated government policy. Such action would provide guidance with respect to responsibilities associated with patent rights in the 9-1-1 context.

II. THE WIRELESS INDUSTRY IS DEEPLY COMMITTED TO ENSURING ACCESS TO EMERGENCY COMMUNICATIONS SERVICES

The wireless industry shares the Commission’s commitment to improving access to emergency communications services for all Americans, particularly as consumers increasingly depend on mobile products and services. Over the past two decades, the wireless industry has made substantial investments in developing and deploying emergency communications services, and continues to do so. Wireless carriers have spent billions of dollars to provide E911 services,

first through compliance with the Commission's Phase I E911 rules, and then the Phase II rules.²

As a result, wireless customers are able to reach first responders quickly by dialing 9-1-1, and first responders have the benefit of reliable and accurate location information for the vast majority of those emergency calls.

The wireless industry's efforts have extended beyond E911 into the on-going development and improvement of other emergency services. As a result of the partnership between the Commission, the Federal Emergency Management Agency and the wireless industry, a new Wireless Emergency Alert program ("WEA") has been developed to deliver geographically-targeted emergency alerts to wireless subscribers.³ This complex but coordinated effort included the development of new technical standards, protocols, processes and other operational changes, with highly successful results. The four nationwide wireless carriers and many regional and smaller carriers – representing more than 97 percent of wireless subscribers – voluntarily participate in WEA, and the government has been able to alert subscribers promptly with urgent information.⁴ Further, voluntary, public-private partnerships have led to the successful creation of Wireless Priority Service, which allows high-priority emergency communications by key government and critical infrastructure personnel to avoid network congestion during emergencies.

² See, e.g., Comments of CTIA, PS Docket No. 10-92, at 9-10 (filed June 25, 2010) (discussing the contributions of the wireless industry to public safety initiatives); see also 47 C.F.R. § 20.18.

³ See 47 C.F.R. §§ 10.1 *et seq.* The WEA program previously was referred to as the Commercial Mobile Alert System or "CMAS."

⁴ CTIA, Consumer Info, "Wireless Emergency Alerts on Your Mobile Device," *available at* http://www.ctia.org/consumer_info/safety/index.cfm/AID/12082 (last visited Mar. 20, 2013). For example, in February 2013, the National Weather Service sent 100 tornado alerts, 80 blizzard alerts, 40 flash flood warning alerts, and five ice storm alerts using the WEA system. The first successful recovery of an abducted eight-month old child as a result of an AMBER Alert sent over the WEA system also occurred in February.

The wireless industry also is aggressively pursuing NG911 solutions to enable non-voice communications like text, photos, video and data between mobile devices and Public Safety Answering Points (“PSAPs”). The potential benefits of NG911 are tremendous for first responders and consumers.⁵ Accordingly, stakeholders are working together to develop common voluntary standards and methodologies that allow for the efficient development and deployment of innovative and flexible NG911 solutions. In the interim, the wireless industry has voluntarily taken steps to implement and deploy text-to-911 capability. Several carriers have partnered with public safety entities to conduct trials assessing the technical feasibility of text-to-911, and the industry is working on technical standards.⁶ In addition, CTIA member companies AT&T, Sprint Nextel, T-Mobile, and Verizon Wireless have agreed to voluntarily enable text-to-911 on their networks by May 15, 2014.⁷ The Commission also is considering mandating that all wireless carriers and providers of interconnected text messaging applications support text-to-911 capabilities.⁸

⁵ As CTIA has previously explained, transitioning to NG911 does raise complex technical and operational challenges. *See, e.g.*, Comments of CTIA, PS Docket Nos. 11-153 and 10-255, at 11-15 (filed Mar. 11, 2013) (“CTIA Text-to-911 Comments”); Reply Comments of CTIA, PS Docket Nos. 11-153 and 10-255, at 2-3 (filed Feb. 9, 2012); Comments of CTIA, PS Docket Nos. 11-153 and 10-255, at 6-13 (filed Dec. 12, 2011); Comments of CTIA, PS Docket No. 10-255, at 3-7 (filed Feb. 28, 2011).

⁶ *See Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, Further Notice of Proposed Rulemaking, 27 FCC Rcd 15659, 15663-65 ¶¶ 10-15 (2012) (“*Text-to-911 FNPRM*”).

⁷ Letter from Terry Hall, APCO International, Barbara Jaeger, NENA, Charles W. McKee, Sprint Nextel, Robert W. Quinn Jr., AT&T, Kathleen O’Brien Ham, T-Mobile USA, and Kathleen Grillo, Verizon, to Julius Genachowski, Chairman, FCC, and Commissioners McDowell, Clyburn, Rosenworcel, and Pai, PS Docket 11-153, PS Docket 10-255 (Dec. 6, 2012).

⁸ *See generally Text-to-911 FNPRM*.

III. THE COMMISSION SHOULD CLARIFY THAT THE USE OF INNOVATIVE WIRELESS TECHNOLOGIES, EVEN IF PATENTED, FOR 9-1-1 EMERGENCY COMMUNICATIONS FURTHERS AND FULFILLS A STATED GOVERNMENT POLICY

Innovation is an integral part of the foundation of the wireless ecosystem that has benefited public safety initiatives, including emergency communications services. The Commission has long promoted such innovation and the benefits it can produce for first responders and consumers. Chairman Genachowski recently emphasized the Commission's "comprehensive strategy to harness the power of new technologies to make the communities we live in safer," noting that "key to this effort is improving 9-1-1 services, both by enhancing legacy 9-1-1 systems and by advancing the deployment of NG911 networks that use cutting edge technology to assist first responders in protecting the public."⁹ Similarly, Commissioner Rosenworcel has underscored the need to capitalize on innovation in the public safety space: "[n]ew technologies ... have the potential to remake emergency communications. In time, they will multiply the digital information that first responders have on hand...."¹⁰ The Commission should ensure that first responders and consumers can take full advantage of wireless innovations and advancements in the public safety sector.

The TCS Petition raises serious concerns about the pursuit of intellectual property rights in the limited context of 9-1-1 communications services. Wireless providers, device manufacturers, and 9-1-1 vendors have become targets of predatory patent infringement lawsuits filed by patent assertion entities (often called "patent trolls"), and as the Petition states, "these cases typically allege infringement based on the mere fact that the defendant is in compliance

⁹ Statement of Chairman Julius Genachowski, *Text-to-911 FNRPM*, 27 FCC Rcd at 15746.

¹⁰ Remarks of Commissioner Jessica Rosenworcel, APCO International 78th Annual Conference & Expo (Aug. 21, 2012), available at <http://www.fcc.gov/document/rosenworcel-remarks-apco-international-78th-annual-conference-expo>.

with the Commission’s E911 regulations.”¹¹ While patent holders should be fairly compensated, CTIA shares the concern that patent infringement claims are based on defendants’ compliance with FCC E911 location accuracy mandates. At a minimum, these lawsuits could increase the cost of E911 services that are borne by local governments and consumers.¹² TCS notes further that these claims “may ultimately have the effect of obstructing the deployment of the capabilities necessary to provide the required accuracy for all forms of E911 and NG911 services.”¹³

The Commission should examine the intellectual property issues raised by the TCS Petition as the patent infringement lawsuits described above threaten to stifle continued advancement and innovation in E911 and NG911 solutions. The Commission should provide guidance that would be relevant to the applicability of 28 U.S.C. § 1498 to patents that are needed to provide E911 and NG911 services.¹⁴ Specifically, the Commission should clarify that 9-1-1 location-based services are in furtherance and fulfillment of a stated government policy, and confirm that it is aware that this policy may make use of patented technologies to comply with its 9-1-1 regulations.

Under Section 1498, “a use is ‘for the Government’ if it is ‘in furtherance and fulfillment of a stated Government policy’ which serves the Government’s interests and which is ‘for the

¹¹ TCS Petition at 3. A wide range of service providers and equipment manufacturers are named defendants in patent infringement cases, including but not limited to, AT&T, Verizon Wireless, Sprint, T-Mobile, U.S. Cellular, Leap/Cricket, Virgin Mobile, GreatCall, Tracfone, Kajeet Wireless, 7-Eleven, Circle K, Ztar Mobile, Boost Mobile, Motorola, LG Electronics, Audiovox, Sanyo, Samsung, and Utstarcom. *See* TCS Petition at Exhibit A.

¹² *See id.*

¹³ *Id.* at 5.

¹⁴ *See id.* at 18-21.

Government's benefit.”¹⁵ The Commission's adoption and implementation of 9-1-1-related standards is in furtherance of an important government function – the protection of the public, and promoting safety of life and property.¹⁶ The use of these standards directly benefits first responders and other public safety entities, as well as the public.¹⁷

As the Commission has long acknowledged, “[t]he life-saving advantage of being able to know accurately and quickly the location of an emergency is obvious. Emergency police, fire and medical teams cannot assist a person they cannot find.... [A]utomatic location identification (ALI) also allows PSAPs and emergency response teams to operate more efficiently.”¹⁸ Thus, providing limited guidance in the 9-1-1 context as requested herein is appropriate and in furtherance of the Commission's 9-1-1 policies, and will help continue to promote innovation for wireless emergency communications services.

IV. CONCLUSION

The wireless industry is committed to facilitating efficient and effective access to emergency communications services, and will continue to work to harness wireless innovations and advancements to improve those services for the benefit of public safety entities and

¹⁵ *Madey v. Duke Univ.*, 413 F. Supp. 2d 601, 607 (M.D.N.C. 2006) (citations omitted).

¹⁶ *See generally* 47 C.F.R. § 20.18.

¹⁷ CTIA notes that the *National Technology Transfer and Advancement Act of 1995* (“NTTAA”), Public Law 104-113, directs all federal government agencies to use, wherever feasible, standards and conformity assessment solutions developed or adopted by voluntary consensus standards bodies in lieu of developing government-unique standards or regulations. The NTTAA also requires government agencies to participate in standards development processes, given that such involvement is in keeping with an agency's mission and budget priorities. OMB – through its Circular A-119 – confirms that close interaction and cooperation between the public and private sectors is critical to developing and using standards that serve national needs and support innovation and competitiveness.

¹⁸ *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Third Report and Order, 14 FCC Rcd 17388, 17389 ¶ 2 (1999).

consumers. However, patent infringement lawsuits based on compliance with FCC rules undermine these efforts. To help ensure a vibrant wireless ecosystem that continues to foster public safety initiatives, the Commission should clarify that 9-1-1 location-based services are in furtherance and fulfillment of a stated government policy, and confirm that it is aware that this policy may require the application of a patent to comply with 9-1-1 regulations.

Respectfully submitted,

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